

A. G. Contract No. KR93 1931TRN  
ECS File: JPA 94-04  
JPA No.: 93-104  
Project: G1050 31C  
Section: Southwest Building Systems  
Access Road ESP

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN

THE STATE OF ARIZONA

AND

THE CITY OF BENSON

THIS AGREEMENT is entered into 8 October, 1993, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF BENSON, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 41-1513 and 28-1895 et seq to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The City has requested Economic Strength Project (ESP) funds in the amount of \$21,600.00; the Arizona Department of Commerce and the Economic Development Commission have recommended the approval of such funds for the City, and the Transportation Board has approved the funding, for the construction of an access road to Southwest Building Systems to provide improved access to the firm, and aid in the retention and development of local business, hereinafter referred to as the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. <u>18094</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>10/08/93</u>
<u>Richard Mahoney</u> Secretary of State
By <u>Vicky D. Greenwood</u>

## II. SCOPE

### 1. The City will:

a. Insure the additional commitment of twenty percent (20%) of the total estimated Project cost, or \$5,400.00, whichever is more, from the City or other sources (not including ESP funds) to the Project and related improvements. Upon completion, accept the Project on behalf of the City and provide maintenance.

b. Invoice the State for ESP funds (Arizona Department of Transportation, ATTN: Director, Transportation Planning Division, 206 S. 17th Avenue, Room 300 B, Phoenix, AZ 85007), in the amount of \$21,600.00.

c. Provide the State a copy of the executed Project contract(s). Substantially draw down and expend the ESP funds within six (6) months after the effective date of this agreement. Provide the State written reports of all ESP fund expenditures, supported by invoices, receipts or other suitable documentation, and a final accounting report no later than thirty (30) days after ESP funds are fully expended. Reimburse the State any funds received under this agreement which are expended and subsequently disallowed by the State.

d. Provide the State (Arizona Department of Commerce, ATTN: Assistant Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85004) with quarterly Project status reports, and one year after completion of the Project, a written Economic Impact Report outlining the impact of the Project, to include jobs created, jobs retained and related data.

### 2. The State will:

a. Within thirty (30) days after receipt and approval of the contract(s) and invoice, advance the City ESP funds in the amount of \$21,600.00.

## III. MISCELLANEOUS PROVISIONS

1. The only interest of the Department of Transportation in the Project is to convey economic strength pass through funds for the use and benefit of the City by reason of state law under which funds for the Project are authorized to be expended.

2. The City agrees to indemnify and save harmless the State, or any of its departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the State of any of the provisions of this agreement.

3. The total amount of ESP funds expended under this agreement shall not exceed eighty percent (80%) of the total Project cost. Should the Project not be completed, be partially completed, or be completed at a lower cost than the advanced amount, or for any other reason should any of these ESP funds not be expended, a proportionate amount of the funds provided under this agreement shall be reimbursed to the State.

4. This agreement shall remain in force and effect until completion of said Project, reimbursement and subsequent reports; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

5. This agreement shall become effective upon filing with the Secretary of State.

6. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Room 222E Mail Drop 616E  
Phoenix, AZ 85007

City of Benson  
City Manager  
160 S. Huachuca Street  
Benson, AZ 85602

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

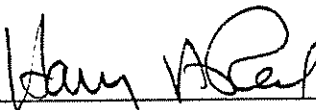
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF BENSON**

**STATE OF ARIZONA**

Department of Transportation

By   
DAVID DIPESO  
Mayor

By   
HARRY A. REED  
Director, Transportation  
Planning Division

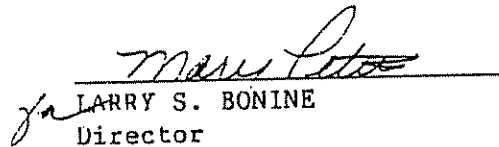
ATTEST:

By   
DORIS HUMPHREY  
City Clerk

RESOLUTION

BE IT RESOLVED on this 3rd day of August 1993, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Transportation Planning Division, to enter into an agreement with the City of Benson for the purpose of defining responsibilities for the pass through of Economic Strength Project funds for the City to construct an access road to Southwest Building Systems.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Director, Transportation Planning Division.

  
LARRY S. BONINE  
Director

RESOLUTION NO. 42-93

A RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO PARTICIPATE IN AN ECONOMIC STRENGTH GRANT.

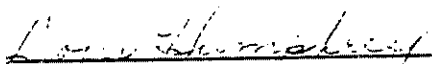
WHEREAS, the Arizona Department of Transportation has agreed to enter into an intergovernmental agreement with the City of Benson and said agreement provides for the Arizona Department of Transportation to provide funding in the amount of \$21,600.00 to be used to construct a paved road and drainage curb from Madison Street to Southwest Building Systems.

NOW, THEREFORE BE IT RESOLVED that the City of Benson be authorized to enter into an intergovernmental agreement providing for the acceptance of the above described funds and the subsequent disbursement in accordance with the provisions of the original grant application, a copy of said intergovernmental agreement being attached to this resolution as an exhibit and incorporated by reference as if here fully set forth.

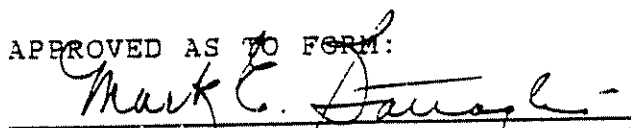
PASSED AND ADOPTED this 20th day of September, 1993, by the Mayor and City Council of Benson, Arizona.

  
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DAVID DIPESO, Mayor

ATTEST:

  
\_\_\_\_\_  
DORIS HUMPHREY - CITY CLERK

APPROVED AS TO FORM:


  
\_\_\_\_\_  
MARK E. BATTAGLIA - CITY ATTORNEY

JPA 93-104

APPROVAL OF THE BENSON CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF BENSON and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 20 day of September, 1993.

  
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City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL  
1275 WEST WASHINGTON, PHOENIX 85007-2926

GRANT WOODS  
ATTORNEY GENERAL

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085


INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR93-1931-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 4<sup>th</sup> day of October, 1993.

GRANT WOODS  
Attorney General

  
JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:lsr  
8118G/93